

Postretirement Break in Service Q & A

During the 2013 session, the Montana Legislature passed HB 78 which created a 150 calendar day break in service requirement for all Teachers' Retirement System (TRS) members. We have received questions from both employers and members regarding the break in service requirement, which we answer below. You can also review the law itself in § 19-20-734, *MCA*.

What is a break in service?

A break in service is a defined interval of time following retirement during which a TRS retiree may not return to work for a TRS employer in any position that would entitle them to active membership in TRS.

Why does TRS require a break in service?

TRS is required, by Montana law, to be a tax-qualified pension plan. In order to maintain its tax-qualified status with the IRS, TRS must comply with many qualification standards set forth in the Internal Revenue Code (*IRC*).

One of the IRS standards for public pension systems prohibits TRS from paying retirement benefits to an individual who remains employed in a position covered by the retirement system. In other words, we may pay retirement benefits *only* to individuals who have actually retired. The IRS requires TRS to verify termination of employment and a bona fide separation from service of its retiring members.

Why 150 days?

TRS cannot investigate each individual to be certain that every retiree has had a bona fide separation from service. The 150 calendar day break in service period helps TRS to ensure that a true separation from service has occurred for all members since the required break is longer than one summer or one semester.

Do other retirement systems require breaks in service?

Over the past several years, due to recent guidance and enhanced scrutiny by the IRS, more retirement systems have implemented break in service requirements; many systems that previously had break in service requirements have extended the length of the break periods.

Public retirement systems around the U.S. have break in service periods ranging from 30 days to a full calendar year. Several retirement systems do not allow *any* level of postretirement employment in a system-covered position.

Who does the break in service requirement apply to?

The break in service requirement applies to **all TRS members** who

- retire or
- apply for recalculation or reinstatement of retirement benefits

based on a termination of employment date of January 1, 2014 or later.

The break in service requirement applies to employment with **all TRS employers** including (but not limited to):

- Community Colleges
- Educational Cooperatives
- K-12 Public Schools
- Montana University System
- State Agencies and Boards

When does the 150 calendar day break in service period begin and end?

Your break in service period

- *begins* on the first day following your last certified date of termination of employment and
- *ends* on the 151st calendar day.

After the break in service period is complete, you may then go to work in a position reportable to TRS as a working retiree. You will be subject to the limitations set forth in § 19-20-731, MCA.

Note: you may not return to work for a preretirement employer if

- you were not normal retirement age (60) at the time of your termination of employment and
- you had a prearranged agreement for postretirement employment with the employer.

For additional information regarding

- retired member status
- certification of termination of employment,
- normal retirement age
- prearranged agreement

please refer to TRS's Termination and Postretirement Q&A which is available on the TRS website at www.trs.mt.gov.

Are there any exceptions to the break in service requirement?

There is only one exception to the break in service requirement. A TRS retiree may provide service as a substitute teacher for **no more than** 45 days during the break in service period subject to the following two requirements:

1. The member must have attained retired member status before providing service as a substitute teacher.
 - A TRS member attains retired member status only after the member has (i) terminated employment in all positions reportable to TRS, (ii) filed an application for retirement allowance, and (iii) actually received at least one monthly retirement benefit payment.
2. The member may only provide service as a substitute teacher
 - a. to carry on the duties of a regular, licensed classroom teacher who is *temporarily* absent and

Note: the Normal Retirement Age exception from the previous section applies to this section as well.

What if I work for a TRS employer but I'm not *their* employee?

IRS guidance on termination of employment and bona fide separation from service requires that the member must cease providing *service* for the employer. The break in service requirement applies to:

- Employees of a third party
- Employees of a TRS employer
- Independent contractors
- Volunteers

If the retired member is performing duties and functions that would typically be performed for pay by an individual who is reported to TRS, even if the retired member is not being paid for those services.

Does the break in service apply to volunteer work?

The question of volunteer work must be understood at two levels:

*1. General status of **all** TRS retirees who are not compensated for their service.*

A TRS retiree is employed in a position reportable to TRS if the retiree is performing duties and functions (i.e. providing service) on behalf of a TRS employer that would entitle that individual to active membership in TRS.

This applies even if the individual is not being paid for the services. If a TRS retiree is providing services that would typically be provided by an individual for pay, that retiree must be reported to TRS as a working retiree. The employer must also remit employer contributions to TRS based on the compensation a non-volunteer employee would be paid for the same work.

2. Uncompensated service, termination of employment, and the break in service requirement

As discussed previously, a bona fide separation from service requires termination of the provision of *services* by the retiring member – not simply the termination of *payment* for their services.

A TRS retiree who performs any service

1. that would entitle them to active membership in TRS
2. on behalf of a TRS employer
3. *before* attaining retired member status
4. and/or *during* the 150 calendar day break in service

has **not** terminated employment in all positions reportable to TRS and is **not eligible** for retirement benefits.

This applies only to services that would entitle the retiree to active membership in TRS. It does not apply to work performed by the retiree for a TRS employer that would normally be performed by uncompensated volunteers.

Examples:

- If you retire as a classroom teacher in May and return to work in an unpaid TRS reportable position such as coach, study hall monitor, or teacher's aide in August, you have violated the break in service period, have not terminated, and are not eligible for retirement benefits.

If you have any questions about this, or any other topic covered in the Q&A, please contact the TRS office at (406) 444-3134 / (866) 600-4045.

What happens if a member violates the break in service requirement?

1. The member will be returned to active member status, retroactive to their date of retirement
2. The member will be required to repay all retirement benefits received during the time they were working and violating the break in service requirement, plus interest.
3. The member and employer will be required to pay both member and employer contributions that should have been paid during the time they were violating the break in service requirement.